

FILED**MAY 27 1998**

IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL DISTRICT
MONTGOMERY COUNTY, ILLINOIS

DANIEL B. BILLINGTON
Circuit Court Clerk
4th Judicial Circuit

PEOPLE OF THE STATE OF)
ILLINOIS, ex rel. JAMES E.)
RYAN, Attorney General of)
the State of Illinois,)

Plaintiff,)

v.)

T. L. DIAMOND AND COMPANY,)
a New York corporation,)

Defendant.)

EPA Region 5 Records Ctr.



362873

No. 96-MR-70

INTERIM CONSENT ORDER

NOW COMES Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, and Defendant, T.L. DIAMOND AND COMPANY, INC., by their undersigned counsel, and in lieu of further litigation, submit the following Interim Consent Order and interim site plan.

The parties agree that this Interim Consent Order and interim site plan is the result of discussions to resolve this matter, which have occurred from time to time, and which have recently accelerated so as to enable this filing. This Interim Consent Order and interim plan for site management is a plan of work necessary to develop the long term site plan, to be finalized over the next ninety (90) days in the form of a final consent order. In that regard, the parties further agree that this Interim Consent Order and interim site plan is effective and enforceable so long as the court agrees that it may be entered in lieu of the formal pretrial and bench trial presently scheduled for May 26, 1998 and June 16, 1998, respectively.

That Defendant is agreeing to this Interim Consent Order and interim site plan shall not be construed as an admission of liability or admission of violation by the Defendant of any of the allegations set forth in the Amended Complaint filed herein, or of any matters covered by this Interim Consent Order. Unless a term is defined hereafter, any term used is intended to have its ordinary meaning, and is not intended to have regulatory significance or constitute an admission of any sort. This Interim Consent Order is not to be used in any other proceeding or matter. The parties agree that this court has jurisdiction over this cause of action and venue is appropriate in the Circuit Court for the Fourth Judicial Circuit, Montgomery County, Illinois.

This interim site plan addresses the preparation and submittal of a storm water pollution prevention plan, certain additional sampling of on-site materials, the development of a ground water monitoring plan, the disposal of construction and demolition debris, and plans for covering and/or removing or processing other site materials.

INTERIM SITE PLAN

A. Storm Water Pollution Prevention Plan

The parties agree that the Storm Water Sampling Plan as presented by Goodwin & Broms, Inc. ("GBI") on behalf of Defendant at the meeting held between the parties on April 7, 1998 and thereafter modified with respect to residual sampling in a meeting between Richard Johnson of the Illinois Environmental Protection

Agency ("Illinois EPA") and Robert Broms of GBI on Wednesday, May 6, 1998, is adequate for the acquisition of data from which a National Pollutant Discharge Elimination System ("NPDES") storm water permit application and a Storm Water Pollution Prevention Plan ("SWPPP") will be developed. The following summarizes the agreement.

The storm water sampling will be completed by constructing two sampling locations (one to the west of the pond and one to the north of the production area) as shown on the drawing or plot plan attached hereto as Exhibit "A". The sampling locations are identified on Exhibit "A" as SWPPP #1 and SWPPP #2. The sampling locations will be equipped with automatic precipitation measurement and sampling equipment which are programmed to collect samples when a storm of adequate magnitude occurs at the site, consistent with 40 C.F.R. 122.21(g)(7).

Each storm water analysis for the storm event will be for both the 30-minute "first flush" and the three hour sample. The parameters to be analyzed are: Oil & Grease, Biological Oxygen Demand ("BOD"), Chemical Oxygen Demand ("COD"), Total Suspended Solids ("TSS"), Phosphorus, Ammonia-Nitrogen, pH, Nitrate/Nitrite, Zinc, Iron, Aluminum, Copper, Nickel, Arsenic, Lead, Cadmium, Barium, Chromium, Mercury, Selenium, Silver, Cyanide, and Hardness.

The schedule for storm water sampling is as follows:

- | | | |
|----|---|--|
| 1. | Completion of storm water sampling dams | Completed |
| 2. | Installation of storm water sampling equipment | May 31, 1998 |
| 3. | Collection of storm water sample
(sooner or later depending if an appropriate rainfall event occurs) | June 30, 1998 |
| 4. | Results of sampling received from lab
(and provided to the other party) | 2-6 weeks after
collection of samples |
| 5. | SWPPP NPDES storm water permit application
submitted to Illinois EPA
(due 45 days following receipt of Illinois EPA lab analyses) | September 1, 1998 |
| 6. | Illinois EPA review of plan | Within 2 weeks of
submission |
| 7. | Plan implementation | Within 30 days of approval |

While sections 4 and 5 of the storm water sampling plan (above) contemplate that Illinois EPA and Defendant will split samples of the storm water from the site, the parties recognize that weather or other conditions may prevent the splitting of storm water samples. Thus, in the event that the amount of storm water collected is not adequate to allow Illinois EPA to obtain a split sample or if Illinois EPA is unable to obtain and properly preserve a split sample in a timely fashion, the parties understand that Illinois EPA may not obtain and analyze split samples of the storm water collected from the Defendant.

In the event that Illinois EPA does not obtain and analyze storm water samples from the site, the Defendant shall submit the results of its storm water sampling immediately upon Defendant's receipt of the analysis results. In such a case, Defendant shall

submit its NPDES storm water permit application and SWPPP to Illinois EPA by September 1, 1998, as indicated in section 5 above.

The SWPPP and permit application shall be processed and reviewed by Illinois EPA consistent with permit review procedures under Section 39(a) and (b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(a) and (b) (1996), and regulations of the Illinois Pollution Control Board, 35 Ill. Adm. Code 309.101-309.191 and other applicable law.

B. Residual Sampling

For purposes of this Interim Consent Order, "residuals" means those site residues which are identified in the left-hand column on the "Proposed Solids Sampling Plan" attached hereto as Exhibit "B" and which are located generally on the Plot Plan attached hereto as Exhibit "C."

The parties agree that residual sampling is required to determine measures for management of storm water runoff from the site residuals, as will be set forth in the SWPPP. In addition, the results of the residual sampling shall also serve as a method to determine which residuals may require further characterization of the contents or concentration of the piles or other management activities beyond those addressed in the SWPPP.

The parties agree that the Defendant's sampling of residuals is/was expected to commence on or about May 19, 1998 and is to be completed by May 22, 1998, weather permitting. The sampling event

will include at least one representative of the Illinois EPA, and provide for "split" sampling, i.e., for Defendant's representative (GBI) to share or split the sample collected with the Illinois EPA, to enable both Plaintiff and Defendant to analyze the sample, so as to compare analytical results. However, Defendant's sampling does not require the presence of an Illinois EPA representative if Illinois EPA chooses not to attend. The parties agree to exchange results of residual sampling, which are expected to be available to Defendant approximately two (2) to six (6) weeks following completion of residual sampling. A summary of the agreement regarding sampling of residuals for development of the SWPPP, and any further residual management activities, follows:

The Defendant's initial solids sampling plan (attached as Exhibits "B & C") addresses both residual piles or mounds and flatter areas where residuals have been spread. This will be completed by collecting and analyzing approximately 120 samples for total lead and cadmium.

The sampling activities are intended to collect samples near the surface of each pile (approximately 6 inches beneath the current surface) and near the bottom of each pile. Larger piles will also have samples collected near the mid-points.

The areas where residuals have been spread will be sampled near the surface and near native soils (the bottom of the material) at each location. A statistical analysis will be

completed to determine the homogeneity of each group of piles and areas.

Analyses for Lead and Cadmium will be completed on all "Rotary Residue Type 2" samples and on an additional twenty-eight (28) random samples, using the Toxic Characteristic Leaching Procedure analytical method ("TCLP"). The values will be correlated statistically with the "total" samples to determine whether any of the samples not sampled for TCLP would be expected to exceed the levels for "hazardous" waste (if the material is considered waste). If any samples exceed "hazardous" levels (based on TCLP tests for lead and cadmium), additional sampling in that area will be completed to better characterize the nature and extent of the "hazardous" levels. Any additional sampling required pursuant to this paragraph shall only be conducted by Defendant following its submittal of a sampling plan setting forth proposed protocol, for review and comment or approval by the Illinois EPA. Any additional sampling by Defendant shall only be conducted following receipt of Illinois EPA's written approval of the additional sampling plan, which approval shall not be unreasonably withheld.

Sampling pursuant to Defendant's initial solids sampling plan will commence on May 19, 1998, and weather permitting, will be completed by May 22, 1998. The parties agree the plan may be adjusted slightly by consent, based on field conditions. Results of this sampling will be available to Illinois EPA on or about

June 15, 1998. The Illinois EPA agrees to make every effort to have the results of its sampling timely available to Defendant. The results of this data will be used for both the SWPPP and to determine future residual management activities.

Initial sampling results may or may not determine that additional sampling would be required. In implementing Defendant's initial sampling plan, it is the intent to comply with objectives of the statistical determinations of SW846, a test methods guidance manual of the United States Environmental Protection Agency, as they relate to determining the homogeneity of sampled piles and other sampled materials as they relate to lead and cadmium concentrations, if any, in excess of TCLP "hazardous" limitations if the material were to be considered a "waste."

Within forty-five (45) days of receipt of the residual sampling results, a written report will be filed with the Illinois EPA summarizing the results and setting forth a plan to further manage residuals, beyond the plan set forth in the SWPPP. Such report shall include a correlation of sampling data between totals, TCLP and SW846, as well as a schedule for implementation of the management activities proposed. Such report shall also include plans for the removal, recycling, reuse, disposal or sale of "hazardous" material and cover or removal (including through recycling, reuse, disposal or sale) of other materials. Once written approval of the report is received, which approval shall

not be unreasonably withheld, the activities in the report shall be commenced.

C. Ground Water Monitoring

Defendant agrees to submit a plan by May 29, 1998, for the installation and sampling of ground water monitoring wells. Defendant's ground water monitoring well installation and sampling plan shall include a proposed schedule of activities required for its implementation. Defendant agrees to implement the plan consistent with such schedule following receipt of written approval of the plan by the Illinois EPA, which approval shall not be unreasonably withheld.

D. Miscellaneous Site Materials

The parties agree that Plaintiff has expressed concern with certain refractory brick and other construction and demolition debris alleged to be present at the site. Since at least January, 1998, Defendant has initiated the requisite sampling of such brick and construction and demolition debris (hereinafter "c&dd") through Liberty Waste to determine its suitability for disposal at Envotech Landfill in Litchfield, Illinois. As evidenced by the shipment of such composite solids to date (and the Uniform Waste Manifests that have accompanied these non-hazardous materials), along with visual inspection expected when residual sampling commences, the parties agree that reasonable progress has been made in the collection and disposal of such c&dd. The Defendant shall continue to take reasonable steps to continue its current

effort for the collection and disposal of such c&dd, consistent with the terms of Public Acts 90-475 and 90-502, which redefined certain c&dd materials and modified the record-keeping requirements for its hauling and disposal, respectively.

E. Residual Shipment/Sale/(Re)use

Nothing in this Interim Consent Order is intended to prohibit Defendant from continuing the sale and shipment of residuals or their reuse in its own operation. Defendant agrees however, not to place the Rotary Residue Type 2 from its current location onto other portions of the site, until sampling results are received.

F. Reporting


Defendant agrees to timely file annual reports as described in 35 Ill. Adm. Code 815.301, beginning the year following completion of the sampling and permitting activities set forth above, the development of information for the submittal of the Initial Facility Report and submittal of said report referenced in 35 Ill. Adm. Code 815, Subpart B. Defendant further agrees to complete and timely file the form issued by the Illinois EPA pursuant to Section 21(d)(3) of the Act, when so notified by the Illinois EPA that it is due. Defendant specifically disputes Plaintiff's contention that the residual materials on site are "waste." However, Defendant agrees to provide such technical information as the Illinois EPA may reasonably require to assess Defendant's plans. The parties agree that by filing this information regarding on-site materials, off-site shipments and

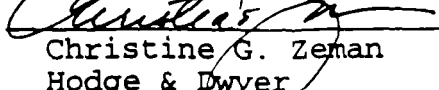
The parties shall advise the court of the status of negotiations and possible settlement or further litigation on August 10, 1998, unless a final consent order is filed prior to that date.

Respectfully submitted by:

Plaintiff
People of the State of Illinois

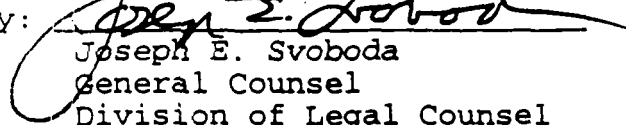
Defendant
T.L. Diamond and Company, Inc.

By: 
Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, IL 62706

By: 
Christine G. Zeman
Hodge & Dwyer
808 South Second Street
Springfield, IL 62704

Date: May 22, 1998


Date: May 21, 1998

By: 
Joseph E. Svoboda
General Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
Springfield, Illinois 62794

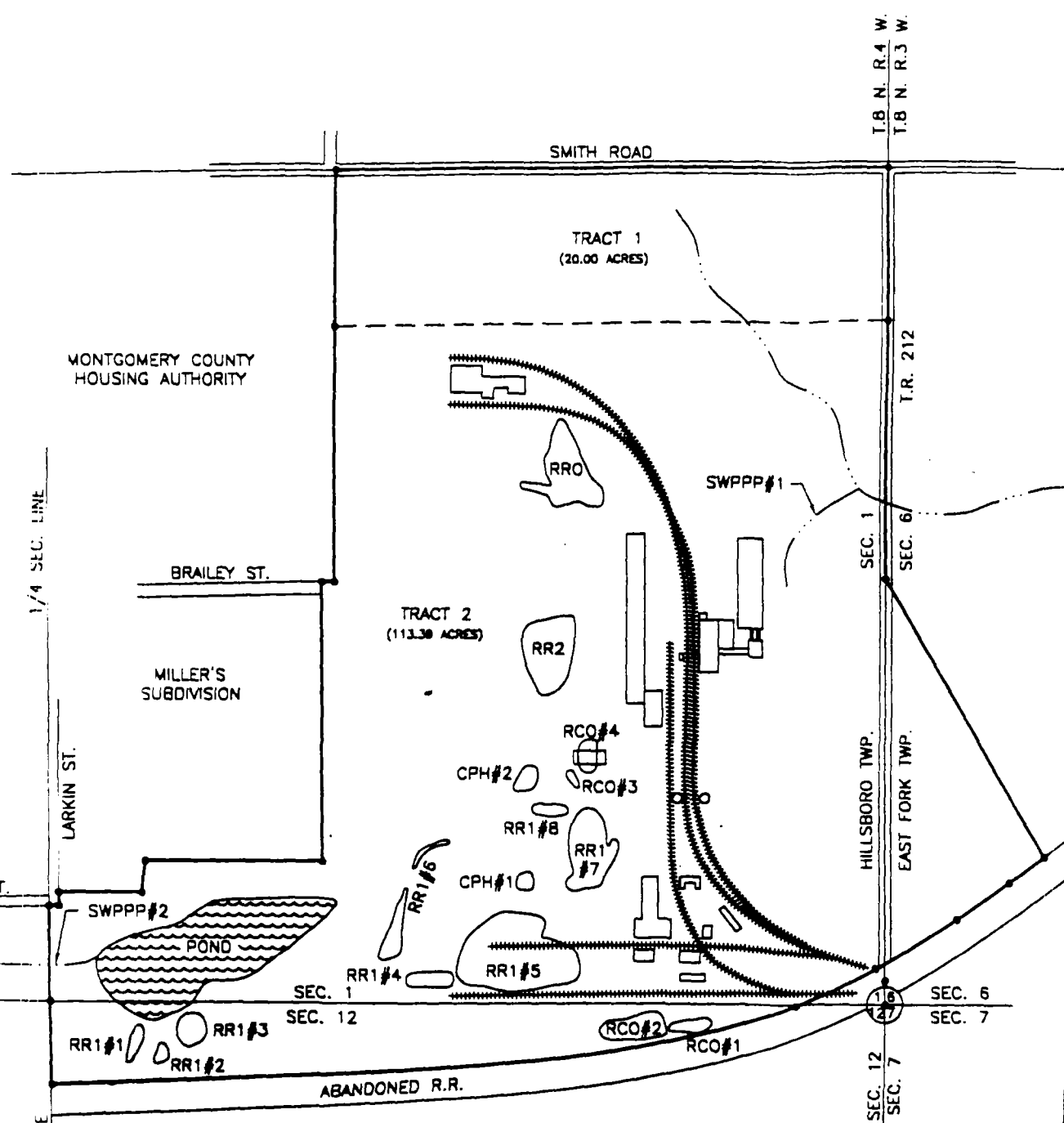
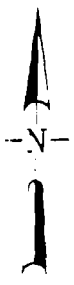
Date: May 22, 1998

IT IS SO ORDERED:

Date of Entry: 5/27/98


Judge Michael P. Kiley

EAGL:001/Fil/Interim Consent Order



RESIDUE AREAS ARE APPROXIMATE AND ARE NOT TO SCALE.

SITE PLAN IS BASED ON A PLAT PROVIDED BY HJRST-ROSCHÉ ENGINEERS, INC.

LEGEND

- SSP = STORMWATER SAMPLING POINT
- RR1 = ROTARY RESIDUE TYPE 1
- RR2 = ROTARY RESIDUE TYPE 2
- RCO = ROTARY CLEAN OUT
- CPH = CARBON PLANT HUTCH
- RRO = ROTARY RESIDUE OVERSIZE

PLOT PLAN

DRAWN BY: SAS	DATE: 2/28/88	REVISED:	REVISED:
EAGLE ZINC / HILLSBORO, ILLINOIS			
GOODWIN & BROMS, INC. CONSULTING ENVIRONMENTAL ENGINEERS			DRAWING NUMBER 97-246

EXHIBIT

"A"

Eagle Zinc

Proposed Solids Sampling Plan

11-May-98

	Near Surface	Near Midpoint	Near Bottom	Total Number of Samples
Rotary Residue Type 1				
RR1 #1	1		1	
RR1 #2	1		1	
RR1 #3	1	1	1	
RR1 #4	1	1	1	
RR1 #5	4	4	4	
RR1 #6	1	1	1	
RR1 #7	4	4	4	
RR1 #8	1		1	
Rotary Residue Type 2				
RR2	4	4	4	
Rotary Clean Out				
RCO #1	1		1	
RCO #2	1	1	1	
RCO #3		1		
RCO #4		1		
Carbon Plant Hutch				
CPH #1	1		1	
CPH #2	1		1	
Rotary Residue Oversize				
RRO	3	3	3	
Total	25	21	25	71

		Near Surface	Near Bottom	
Area 1 Random Sampling	6.2 acres	5	5	10
Area 2 Random Sampling	4.6 acres	4	4	8
Area 3 Random Sampling	9.2 acres	7	7	14
Area 4 Random Sampling	11.0 acres	9	9	18

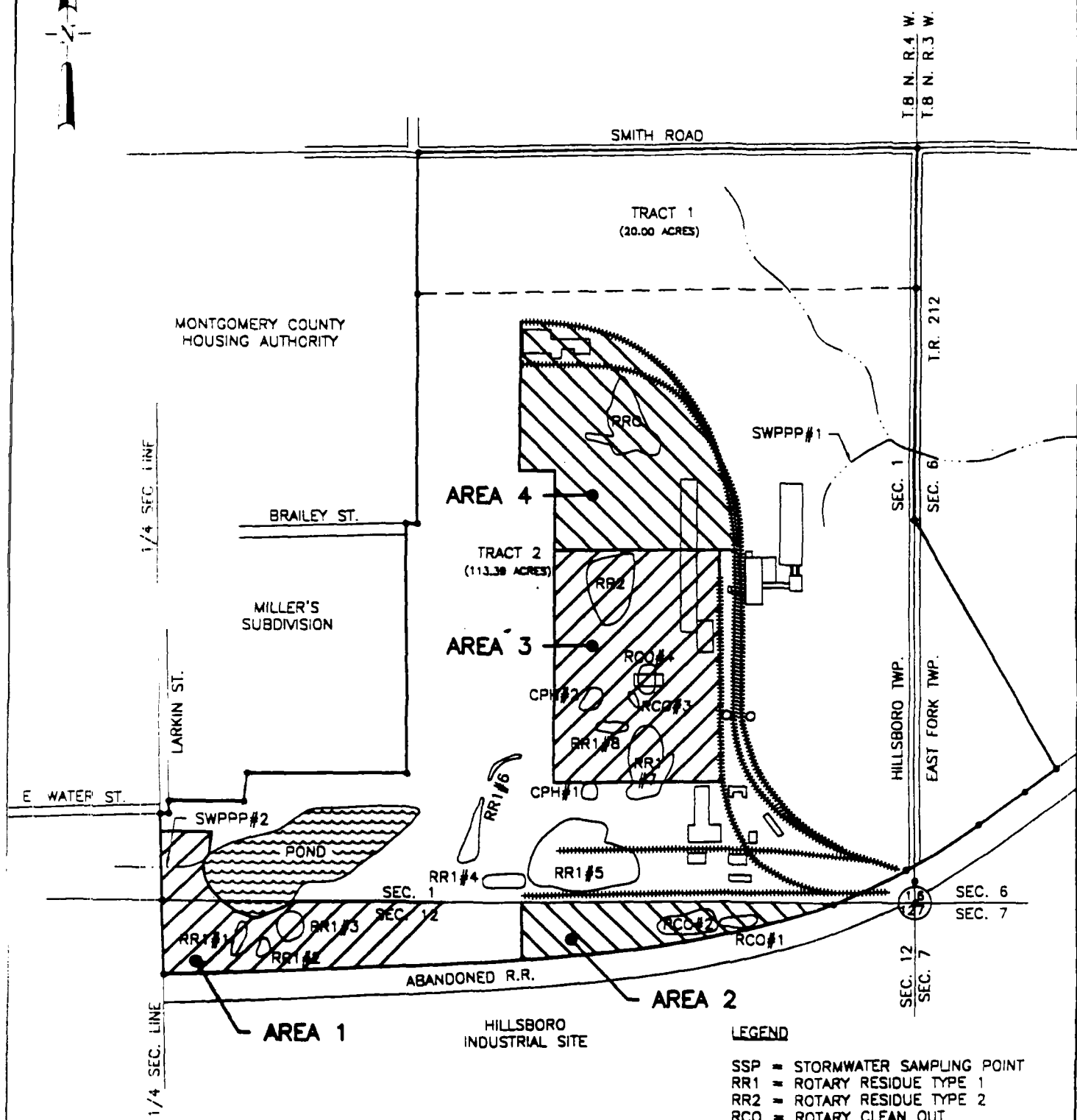
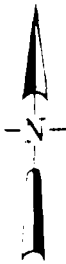
Total Number of Samples -----> 121

Refer to Plot Plan for Location

Goodwin & Broms, Inc.
Consulting Environmental Engineers

EXHIBIT

"B"



RESIDUE AREAS ARE APPROXIMATE AND ARE NOT TO SCALE.

SITE PLAN IS BASED ON A PLAT PROVIDED BY HURST-ROSCH ENGINEERS, INC.

PLOT PLAN

DRAWN BY: BAE	DATE: 2/26/88	REVIEWED:	REVIEWED:
EAGLE ZINC / HILLSBORO, ILLINOIS			
GOODWIN & BROMS, INC. CONSULTING ENVIRONMENTAL ENGINEERS			DRAWING NUMBER 97-246

EXHIBIT

"C"